

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 320554

In re Application of

CALVARY CHAPEL OF SANTA CRUZ)	
for License to Cover)	BLED-20151218BSL
BNPED-20071022AXV)	
New Noncommercial Educational FM Station)	
to serve Scotts Valle, CA)	

To: Chief, Audi Division, Media Bureau

PETITION TO DENY

Eschaton Foundation ("Petitioner") by its attorney here petitions the Commission to dismiss or deny the above application by Calvary Chapel of Santa Cruz (CCSC) for license to cover. This petition is based on the fact that CCSC did not in actual fact construct the station as authorized in its construction permit, but rather falsely certified to the completion of construction.

Background. Petitioner and CCSC were mutually exclusive applicants in MX Group Number 25. By staff letter dated August 12, 2012 the applications were tentatively selected and given 90 days to effectuate a time share. The applicants did so, submitting their time sharing agreement on November 26, 2012. As a result, CCSC was granted a time-shared construction permit dated December 20, 2012, and expiring at 3:00 a.m. local time on December 20, 2015. Two days before the expiration date, CCSC submitted its license application, replete with false certifications that it had completed construction. Petitioner obviously does not wish to share time with a licensee that is incapable of being truthful with the Commission. Petitioner has standing.

The CCSC construction permit specified construction of an antenna center line 23 meters above ground on an existing tower located at:

37 03 43 N Lat.

122 07 14 W. Long.

Attached is a declaration from J.V. Rudnick, who describes himself as a retired telecommunications engineer and consultant, and formerly manager of the tower located at 37 03 42.82 N. Lat., 122 07 17.87 W. Long. (The three second derogation in longitude from the CCSC authorization is explained by conversion between NAD 27 and NAD 83). Under penalty of perjury Mr. Rudnick states that the tower was dismantled as as of December, 2014. A new 40-foot tower was installed nearby, and one FM translator was moved over. Then on December 10, 2015, he received a voice message from Lee Wagner, identifying himself as a broadcast engineer, and inquiring about the installation of an antenna by December 20. He returned the call and spoke to him, informing him that the desired tower no longer existed.

On December 21 Mr. Rudnick drove to the location of the new 40' tower and the old tower, at 7721 Empire Grade. He ascertained that no new antenna arrays had been installed on the new tower either. He took a photo of the new tower, confirming this fact.

Multiple misrepresentations. That the originally specified, and admittedly intended tower location was not used is clear. It is also clear that the new 40' foot tower nearby was not used, nor would it be suitable since the radiation center line in the construction permit was 23 meters (75.46 feet). When it is recognized that the construction at this site did not actually occur, the December 18 license application makes for some interesting reading.¹ The applicant certifies that all “terms, conditions, and obligations” of the construction permit have been fully met, Section II, Question II. The facility was “constructed as authorized in the underlying construction permit,” Section III, Question 7. “Yes.” An attached engineering affidavit certifies that the antenna was mounted “with the center of radiation at 23 meters.” It was signed, Lee Alan Wagner Eng. Penfold Communications. It

¹ Also included was a request for program test authority, 20151218BTG.

does not discuss or describe the tower location. Inasmuch as this would appear to be the same Lee Wagner who was informed that the proposed tower did not exist, this certification at best would pertain to another tower location and would be nothing less than a deliberate and knowing false representation. The application also includes a surveyor representation that the three-bay directional array was pointed correctly. Again no tower or tower location is specified, so the benefit of certifying that it is pointed the right way, from the wrong place, is debatable.²

On January 8, 2016, CCSC applied for a “minor amendment to a pending application.” It proposes to move the station location to a 47 meter tower located at:

37 06 02 N. Lat.

122 08 24 W. Long.

This is a little over 5 km from the site specified in the CP and the license application. There are but two possibilities. If this is a proposal to modify the construction permit, it is grossly untimely and must be summarily dismissed. If it is a proposal to modify the license, it would appear to be nothing more or less than a cover up, to retroactively authorize a location that may have been used to beat the deadline, in lieu of the one actually specified in the construction permit.

Legal Analysis. If it ever did, the Commission no longer temporizes with attempts to secure an authorization, when construction during the permitted time has not actually occurred:

All broadcast permittees must, by the construction deadline specified in each construction permit: (1) build in accordance with all terms of the construction permit; and (2) file a license application demonstrating proper construction. Parties cannot file defective license applications as mere placeholders.

Tango Radio LLC, FCC 15-128, released on September 21, 2015 at para. 6. The Commission also cautions against the manipulation of amendments to secure addition time, when the actual construction

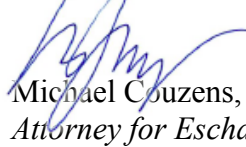
² The overall engineering was certified by Robert Moore, a known and reputable consulting engineer (though the relationship to applicant is mistakenly given as Robert Moore). Mr. Moore is based in Goshen, Indiana, and there is no information that he has personal knowledge of these events. The elaborate falsehoods conceivably could have been developed and implemented by the permittee locally without his knowledge.

project within the deadline has failed:

The Applicants' attempted use of the corrective amendment process to extend their construction deadline is inappropriate and inconsistent with the Commission's goal of prompt initiation of service and spectrum efficiency. We direct the Bureau to reject any such attempts in the future and to consistently enforce Section 73.3598(e) of the Rules.³ [Id. Para. 6]

Conclusion. Petitioner has presented probative evidence that the authorized construction did not occur. In the circumstances, the application for license must be dismissed or denied. Further, assuming construction did occur at another location, it may be appropriate for the Enforcement Bureau to investigate all the facts and circumstances, and to determine the exact parties involved in making a series of false representations for the purpose of securing an authorization that otherwise would have been terminated.

Respectfully submitted,



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³ Citing 47 C.F.R. Sections 73.3598(a) and (e). Section 73.3598(e) provides: “[a]ny construction permit for which construction has not been completed and for which an application for license has not been filed, shall be automatically forfeited upon expiration without any affirmative cancellation by the Commission.” 47 C.F.R. Sec. 73.3598(e).

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Petition to Deny was mailed on January 21, 2015 by First

Class Mail with postage fully prepaid to the following:

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